

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Suspension Order:

Case No. R-2063

ELAINA M. GRAVITT, R.C.P.

OAH No. L2007050695

Respiratory Care Practitioner License No.
18448

Respondent.

INTERIM SUSPENSION ORDER
(Gov. Code § 11529)

On June 6, 2007, in San Diego, California, Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David P. Chan, Deputy Attorney General, appeared and represented petitioner Stephanie Nunez, Executive Officer of the Respiratory Care Board, Department of Consumer Affairs, State of California.

Respondent Elaina M. Gravitt appeared and represented herself at the hearing.

Evidence was received and oral argument was given. The matter was submitted on June 6, 2007.

FACTUAL FINDINGS

1. Petitioner Stephanie Nunez (petitioner) is the Executive Officer of the Respiratory Care Board (the Board) and she brought this action in her official capacity.

2. On December 28, 1995, the Board issued Respiratory Care Practitioner License No. 18448 (the license) to respondent Elaina M. Gravitt (respondent). The license was in full force and effect until February 28, 2007 when it expired without being properly renewed. Respondent provided a delinquent renewal payment on March 29, 2007 and on April 20, 2007, the renewal payment was returned due to insufficient funds. Respondent made another delinquent renewal payment on April 30, 2007, but on May 22, 2007, the

renewal payment was again returned due to insufficient funds. Therefore respondent's license is currently expired as of February 28, 2007.

3. On May 18, 2007, petitioner filed a Petition for Interim Order of Suspension (ISO petition) against respondent dated May 18, 2007. On May 23, 2007, Administrative Law Judge Donald Cole (ALJ Cole) heard petitioner's ex parte request for an Interim Order of Suspension (ISO). Respondent appeared at the ex parte hearing on her own behalf.

At the ex parte hearing, ALJ Cole issued an ISO suspending respondent's Respiratory Care Practitioner License pending further order of the administrative court. The court's order also ordered respondent to appear for a hearing to show cause why the ISO should not remain in full force and effect pending the outcome of proceedings before the Board. The hearing to show cause on the ISO was set for June 6, 2007. Subsequently, petitioner served the ISO on respondent and the petition and the supporting points and authorities with exhibits and declarations.

4. Respondent was properly served with the ISO and had notice that the matter was set for hearing on June 6, 2007. However, respondent failed to file any response to the petition for ISO pursuant to Government Code section 11529. She did appear and present evidence at the hearing.

5. The administrative court has read and considered all documents properly submitted by the parties and received into evidence. The following facts are established.

6. On January 17, 2007, respondent reported for work at her place of employment the Desert Regional Medical Center. Respondent worked that day in her position as a respiratory care practitioner and cared for patients in that capacity. Respondent told her supervisor that she was coming in to work in place of her husband that day because he had not slept that night and could not work. Once respondent was on duty, the night shift therapist reported to respondent's supervisor that he suspected respondent was under the influence of drugs so respondent's supervisor went to find respondent to follow through on this report. The supervisor found respondent in the emergency room area curled up in a chair with her eyes closed. Respondent was observed to be disoriented, but told her supervisor she was alright. Respondent further told her supervisor that she had not had much sleep that night since her husband was seeing demons and saying evil things. Respondent was jittery and could not seem to focus on her supervisor's questions. Respondent's eyes were darting back and forth and she was looking around, apparently not able to focus. Respondent was sent to Employee Health for a fitness-for-duty assessment and drug screening.

7. The assessment was performed on the same day. During the assessment, respondent had difficulty recalling, adding and subtracting, and was unable to balance herself on one foot. Her pupils were found to be dilated and barely reactive. Respondent admitted to using methamphetamines and admitted she had previously been in a drug rehabilitation program the year before. A drug screen was also done on respondent. The drug screen results showed that respondent was positive for amphetamines. It was determined that the amphetamines found in respondent's drug screen were from a street drug and not from a

prescribed medication. Respondent was placed on a medical leave of absence from her job at the medical center.

8. Respondent returned to work at the Desert Regional Medical Center on May 4, 2007. Respondent's employer continues to have concerns about respondent's attendance and her time keeping issues as well as concerns about respondent remaining on duty at her assigned work area. Respondent submitted to a drug screening on May 17, 2007 and the results were negative.

9. Respondent reported to work on January 17, 2007 in an intoxicated state under the influence of the street drug methamphetamine. In addition, the report from the drug screening test that day indicates that respondent took steps to try to confuse the drug screen test. Respondent's actions in reporting to work in an intoxicated state endangered patients.

10. Respondent submitted documentation purporting to show she has been in recovery since January 2007. One letter dated March 30, 2007, from Joy Wanek of Resolutions Home of Pine Ridge Treatment Centers, states that respondent has completed their intensive out-patient program and was in strict compliance with the program. Ms. Wanek further states that respondent is participating in the continuing care program. However, there are few details provided about the nature of the program in which respondent participated. Respondent also provided two notes from her physician, Dr. Alex Christ, that release respondent to return to work on full duty, but there is no indication of what he had been treating her for and why she is prescribed certain medications.

11. Respondent testified that she is now clean and sober and attending Narcotics Anonymous (NA) and Alcohol Anonymous (AA) meetings several times a week. Respondent acknowledges she was using methamphetamine after being in recovery a year ago for substance abuse. However, when asked about her "sobriety date" at the hearing, she did not know the meaning of that term and she seemed unsure of when she actually stopped using. Respondent stated at the hearing that she had started using methamphetamine when she was under a great deal of stress related to family and financial problems. She further claimed that she is not a threat to herself or her patients and she wants to go back to work.

12. Petitioner has established that there is a reasonable probability that petitioner will prevail in the underlying disciplinary action that has been filed. In addition, petitioner has established that respondent reported to work while under the influence of a street drug containing methamphetamine. This conduct demonstrates a serious disregard for the public trust and clearly establishes that respondent poses a risk of serious injury to the public health, safety, and welfare, if she is allowed to continue to work as a respiratory care practitioner. The likelihood of injury to the public in not suspending respondent's license outweighs the likelihood of injury to the licensee in suspending respondent's license.

LEGAL CONCLUSIONS

All conclusions are based on Factual Findings 1-12.

1. There is a reasonable probability that petitioner will prevail in the underlying action.
2. The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.
3. There is sufficient evidence to establish that respondent has engaged in acts or omissions constituting violations of the Medical Practice Act, and permitting respondent to continue to engage in the practice of respiratory care will endanger the public health, safety, and welfare.
4. There is sufficient evidence to show that respondent cannot practice respiratory care without an unacceptable risk of harm to the public.
5. There is insufficient evidence to the contrary, and insufficient evidence to show that respondent can practice respiratory care without an unacceptable risk of harm to the public.

ORDER

Respiratory Care Practitioner License No. 18448 issued to respondent Elaina M. Gravitt, R.C.P. is hereby SUSPENDED.

DATED: 6/15/07



GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings